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Supreme Court No. 82868-7
Court of Appeals No. 27277-0-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of

VINCENT R. ADOLPH,

Petitioner.

ON REVIEW FROM THE COURT OF APPEALS,
DIVISION THREE

SUPPLEMENTAL BRIEF OF PETITIONER

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A. SUMMARY OF ARGUMENT

At sentencing following Vincent Adolph's conviction for vehicular homicide, the court added six years to his sentence based on the State's allegation that Adolph had three prior offenses for driving under the influence (DUI). To prove one of the prior offenses, the State offered only criminal history summaries obtained from the Department of Licensing (DOL) and online from the Judicial Information System, which listed the alleged offense. The State did not offer a court-certified copy of the judgment and sentence, or explain why it did not do so, as required. Adolph objected to the sufficiency of the State's evidence for the offense.

Because the State did not sustain its burden of proving the prior offense, the sentence must be reversed. Moreover, because Adolph specifically objected to the sufficiency of the evidence, the State may not present additional evidence on remand.

B. ISSUES PRESENTED

1. Whether Adolph specifically objected to the State's evidence of the prior offense, where defense counsel asserted the State's documents were "insufficient"?

2. Whether the criminal history summaries presented by the State were sufficient to prove the prior offense?

3. Whether the State failed to meet its burden of proof, where it did not offer a court-certified copy of the judgment and sentence, or explain why it did not do so, as required?

4. Whether the court documents the State offered to prove the prior offense were admissible, where they did not display the seal of the court, as required by statute?

5. Whether the court documents the State offered to prove the prior offense were admissible, where the State offered them only after the trial court overruled Adolph's specific objection to the sufficiency of the evidence and pronounced the sentence?

6. Whether the State may present additional evidence on remand, where Adolph specifically objected to the State's evidence below?

7. Whether Adolph may challenge his illegal sentence in a collateral attack?

8. Whether the personal restraint petition (PRP) is timely, where Adolph filed it within one year after the mandate was issued following his direct appeal?

9. Whether Adolph may challenge his sentence in this PRP, which raises a new issue, where he was not represented by counsel in his previous PRP?

C. STATEMENT OF THE CASE

Vincent Adolph was convicted in Okanogan Superior Court of one count of vehicular homicide under RCW 46.61.520(1)(a), and one count of vehicular assault under RCW 46.61.522(1)(b), as the result of an incident that occurred on January 26, 2003.

At the September 19, 2005, sentencing hearing, the prosecutor asserted Adolph had three "prior offenses" for DUI and that an additional six-year sentence enhancement should be added to his sentence pursuant to the vehicular homicide statute, RCW 46.61.520(2). RP¹ 7-8, 11. That statute provides that, when a person is convicted under subsection (1)(a),² "an additional two years shall be added to the sentence for each prior offense as defined in RCW 46.61.5055." RCW 46.61.520(2). The statutory definition of "prior offense" includes prior convictions or deferred prosecutions for DUI. RCW 46.61.5055(14)(a)(i), (vii).

Defense counsel did not contest two of the alleged prior offenses, but did specifically object to one of them, a 1992 DUI

¹ The only volume of transcripts cited in this brief is from the September 19, 2005, sentencing hearing, which will be referred to as "RP."

² A person is guilty of vehicular homicide under subsection (1)(a) if he or she was "operating a motor vehicle . . . [w]hile under the influence of intoxicating liquor or any drug," and his or her driving was a proximate cause of the death of another person. RCW 46.61.520(1)(a).

conviction from Lincoln County. RP 31-32. To prove the Lincoln County offense, the prosecutor offered a DOL "Abstract of Complete Driving Record" and a "Defendant Case History (DCH)" printout obtained online from the Judicial Information System, both of which contained criminal history summaries listing the alleged offense. Appendix A. Defense counsel objected, arguing:

[I]n regards to the conviction from Lincoln County, that the record is insufficient. I don't believe that the materials sufficiently set forth that conviction. In the Lincoln county abstract of record, this simply says DWI and that's what it says. That's without say [sic] in regards to the criminal history.

RP 31-32.

The court recognized that defense counsel "fully challenges the State's level of proof for the Lincoln County conviction from 1992." RP 60. But the court overruled the objection and found the State's criminal history summaries were sufficient to prove the prior offense. RP 59-61. Consequently, the court imposed a six-year sentence enhancement based on the three prior DUI offenses, for a total of eight years in prison. RP 76.

After the court pronounced the sentence and signed the judgment and sentence, the prosecutor belatedly offered two additional documents in regard to the Lincoln County offense: copies of the DUI citation and the Lincoln County District Court

docket. RP 76, 85-88; Appendix B. Although the documents were certified by the Lincoln County District Court clerk, they did not display the seal of the court. Appendix B. Further, the prosecutor never explained why he did not offer a court-certified copy of the Lincoln County judgment and sentence for the prior offense.

The judge allowed the prosecutor to file the additional documents in the court file, but explained he did not depend on them in ruling that the State had sustained its burden of proving the prior offense. RP 89.

Adolph appealed his conviction and sentence but did not challenge the sufficiency of the State's proof of the prior Lincoln County offense. The Court of Appeals affirmed and this Court denied review. The Court of Appeals issued the mandate on June 11, 2008. Appendix C (Docket, COA #24597-7-III).

Adolph, without the assistance of counsel, filed a CrR 7.8 motion in the trial court, which was transferred to the Court of Appeals as a PRP on August 20, 2007. Appendix D (Docket, COA #26367-3-III). The Court of Appeals dismissed the PRP without appointing counsel and this Court denied review. Id.

On July 21, 2008, Adolph filed this PRP in the Court of Appeals, once again without the assistance of counsel. Adolph

argued the State had not carried its burden of proving the Lincoln County prior DUI offense. He also argued that, because he specifically objected to the State's proof at sentencing, the State should not have a second opportunity to prove the prior offense on remand. In response, the State argued: (1) the PRP was untimely because it was filed past the one-year time limit prescribed by RCW 10.73.090(1); (2) the PRP was procedurally barred because it was successive; (3) Adolph could not challenge his sentence in a PRP and should have raised the issue in his direct appeal; (4) the documents the State presented were sufficient to prove the prior offense; and (5) Adolph's objection at sentencing was not sufficiently specific to bar the State from presenting additional evidence on remand if the sentence is reversed.

The Court of Appeals acknowledged the PRP raised a new issue but dismissed the petition without appointing counsel to represent Adolph. This Court granted Adolph's motion for discretionary review and appointed counsel.

D. ARGUMENT

1. THE STATE'S PROOF OF THE PRIOR OFFENSE WAS INSUFFICIENT

It is a fundamental principle of constitutional due process³ that a sentencing court may rely on a prior offense to impose a sentence under the Sentencing Reform Act (SRA) only if the State proves the existence of the prior offense by a preponderance of the evidence. State v. Ford, 137 Wn.2d 472, 479-80, 973 P.2d 452 (1999) (citing State v. Ammons, 105 Wn.2d 175, 186, 713 P.2d 719 (1986)); former RCW 9.94A.530(2) (2005).⁴ That is because it is "inconsistent with our system of justice to sentence a person on the basis of crimes that the State either could not or chose not to prove." Ford, 137 Wn.2d at 480 (quoting In re Pers. Restraint of Williams, 111 Wn.2d 353, 357, 759 P.2d 436 (1988)).

Moreover, constitutional due process requires that the State, not the defendant, bear the burden to assure that the record before

³ The Fourteenth Amendment provides: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law." Article 1, section 3 of the Washington Constitution provides, "No person shall be deprived of life, liberty, or property, without due process of law."

⁴ RCW 9.94A.530(2) was substantially amended in 2008. Laws 2008, ch. 231, § 4. The amendments will be discussed in a section of the brief below. This portion of the brief cites to the version of the statute in effect at the time of Adolph's sentencing in 2005.

the sentencing court supports the criminal history determination. State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009) (citing Ford, 137 Wn.2d at 480). Due process prohibits a court from sentencing a defendant on the basis of information that is not sufficiently supported by the record. Ford, 137 Wn.2d at 481. If the evidence is insufficient or incomplete, the State should not be making assertions regarding criminal history that it cannot substantiate. Id. at 482.

To prove a prior offense, the best evidence is a court-certified copy of the judgment and sentence. Ford, 137 Wn.2d at 480; State v. Lopez, 147 Wn.2d 515, 519, 55 P.3d 609 (2002); State v. Rivers, 130 Wn. App. 689, 698, 128 P.3d 608 (2005).

a. The criminal history summaries were insufficient to prove the prior offense. At sentencing, to prove the prior Lincoln County DUI offense, the State offered a DOL "Abstract of Complete Driving Record" and a "Defendant Case History (DCH)" printout obtained online, both of which listed the offense as part of a criminal history summary. Appendix A. These documents were insufficient to prove the prior offense.

In Mendoza, this Court recently held that the State may not rely only upon a criminal history summary listing a prior offense in

order to prove the existence of the offense. Mendoza, 165 Wn.2d at 920, 925. "This reflects fundamental principles of due process, which require that a sentencing court base its decision on information bearing "some minimal indicia of reliability *beyond mere allegation.*" Id. at 920 (quoting Ford, 137 Wn.2d at 481 (quoting United States v. Ibarra, 737 F.2d 825, 827 (9th Cir. 1984))). In Mendoza, at both Mendoza's and Henderson's sentencings, the prosecutors offered only statements listing the asserted prior convictions, which included the sentencing courts and dates of the alleged crimes, but the prosecutors did not provide any documentation establishing the prior convictions. Id. at 917-19. This Court held the State was required to submit additional evidence verifying the convictions. Id. at 920, 925. The Court reaffirmed that the best evidence to prove the prior convictions is a court-certified copy of the judgment and sentence. Id. at 920. The Court required the State to submit additional evidence, even though neither defendant objected at sentencing to the prosecutors' assertions of their criminal histories. Id. at 918-19; 930.

Thus, under Mendoza, the DOL and online criminal history summaries offered by the State in this case were insufficient to

prove the prior offense. Due process requires additional evidence from the State. Mendoza, 165 Wn.2d at 920, 929.

b. The DUI citation and Lincoln County District Court docket were also insufficient to prove the prior offense. Only after the trial court overruled Adolph's objection to the DOL and online criminal history summaries, and pronounced the sentence and signed the judgment and sentence, did the State belatedly offer two additional documents regarding the Lincoln County offense: copies of the DUI citation and the Lincoln County District Court docket. RP 76, 85-88; Appendix B. These documents were insufficient to carry the State's burden of proof, because: (1) they were not the best evidence of the prior offense, which is a court-certified copy of the judgment and sentence, and the prosecutor did not explain why he did not offer that document; (2) although they were certified by the court clerk, they did not have the seal of the court annexed; and (3) they were offered after the court overruled Adolph's objection and imposed the sentence, and were not relied upon by the court.

i. The State was required to present a court-certified copy of the judgment and sentence or explain why it could not. Again, the rule is well established that to prove a prior offense, the best evidence is a court-certified copy of the judgment and

sentence. Mendoza, 165 Wn.2d at 920; Lopez, 147 Wn.2d at 519; Ford, 137 Wn.2d at 480; Rivers, 130 Wn. App. at, 698. The State may introduce other comparable evidence only if it shows that the document is unavailable for some reason other than the serious fault of the proponent. Lopez, 147 Wn.2d at 519 (citing State v. Fricks, 91 Wn.2d 391, 397, 588 P.2d 11328 (1979)). In Rivers, the State did not offer a court-certified copy of the judgment and sentence, despite Rivers's objection, and provided no explanation why it failed to do so. Rivers, 130 Wn. App. at 699, 705. Therefore, the State failed to meet its burden of proof. Id.

In this case, as in Rivers, the State did not offer a court-certified copy of the judgment and sentence and did not explain why it did not, despite Adolph's objection. The prosecutor explained only that in Lincoln County at the time of the prior DUI offense in 1992, "they--didn't seem to use the standard guilty plea forms." RP 88. But this does not explain why the prosecutor could not offer a court-certified copy of the judgment and sentence.

Defense counsel acknowledged that the Lincoln County docket appeared to be "a valid document." RP 88. But as in Rivers, "authenticity of the admitted documents is not the issue. Whether the State proved by a preponderance of the evidence" the

prior offense is the issue. Rivers, 130 Wn. App. at 698. The State was required to produce a court-certified copy of the judgment and sentence, not the court docket, to prove the prior offense.

In 1992, when Adolph was allegedly sentenced for the DUI offense, written judgments and sentences were in use in district courts in Washington. The rules for courts of limited jurisdiction required that, when an offender was convicted of a crime, "[t]he judge or clerk shall enter the judgment on the record." Former CrRLJ 7.3 (1987). The "judgment of conviction" was required to set forth "whether the defendant was represented by a lawyer or waived representation by a lawyer, the plea, the verdict or findings, and the adjudication and sentence." Id. The rules further required that "[a] record of the sentencing proceedings shall be made." Former CrRLJ 7.2(d) (1991).

Although the rules did not require that a district court judgment be in writing and signed by the judge, the task force adopting the rules in 1987 clearly contemplated that a written and signed judgment and sentence would be used in many courts. The task force comment to CrRLJ 7.3 states,

The task force debate centered around whether the judgment should be in writing and signed by the judge. Concerns were raised about the high volume of cases in the courts of limited jurisdiction and the

additional paperwork and file storage problems that would arise from a requirement of a written judgment. Yet the absence of a written judgment setting forth, for example, the conditions of probation may give rise to due process issues if a defendant is charged with violating those conditions. The task force, after much discussion, elected to provide that "The judge or clerk shall enter the judgment on the record." This requirement . . . will be satisfied by an entry on the taped record. Nevertheless, the task force agreed that written and signed judgments should be strongly encouraged.

4B Karl B. Tegland, Rules Practice: CrRLJ 7.3 (7th ed. 2008).

Thus, written and signed judgments were "strongly encouraged" by the rules task force, and may have been in use in Lincoln County at the time of Adolph's prior alleged DUI offense.⁵ Adolph objected to the sufficiency of the State's evidence and the State was required to offer a court-certified copy of the judgment and sentence or explain why it could not. Because the State did not do so, it failed to sustain its burden of proof.

ii. The State was required to present a court-certified document that had the seal of the court annexed. The copies of the DUI citation and the Lincoln County District Court

⁵ Standard judgment and sentence forms for DUIs and other misdemeanor convictions that have been prepared by the Pattern Forms Committee and the Administrative Office of the Courts and are used statewide in district courts in Washington are now available on the courts' web site, <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=27>.

docket were certified by the district court clerk but do not have the seal of the court annexed. Appendix B. For this reason also, the documents are insufficient to sustain the State's burden of proof.

RCW 5.44.010 provides that when court records are offered in evidence, they must be certified by the court clerk, with the seal of the court annexed:

The records and proceedings of any court of the United States, or any state or territory, shall be admissible in evidence in all cases in this state when duly certified by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

This is a long-standing rule in Washington, from territorial days, which governs the admissibility of public documents into evidence. State v. Murdock, 91 Wn.2d 336, 340, 588 P.2d 1143 (1979); RCW 5.44.010, Historical and Statutory Notes.

In Murdock, 91 Wn.2d at 339-40 (cited in Rivers, 130 Wn. App. at 702), this Court held, "[c]opies of the judgment and sentence which are to be admitted to prove the fact of any conviction must be certified by the court with the seal of the court annexed, as required by RCW 5.44.010." This rule of evidence and due process has been stated and applied in other cases. Rivers, 130 Wn. App. at 702 (citing Murdock, 91 Wn.2d at 340 (citing State

v. O'Dell, 46 Wn.2d 206, 212, 279 P.2d 1087 (1955); State v. Kelly, 52 Wn.2d 676, 328 P.2d 362 (1958); State v. Reed, 56 Wn.2d 668, 682, 354 P.2d 935 (1960)).

In sum, the copies of the district court docket and DUI citation were not admissible to prove the prior offense, because they did not have the seal of the court annexed.

iii. The State was not allowed to offer additional evidence after the court overruled Adolph's objection and pronounced the sentence. In Mendoza, this Court reaffirmed that "[w]hen a defendant raises a specific objection at sentencing and the State fails to respond with evidence of the defendant's prior convictions, then the State is held to the record as it existed at the sentencing hearing." Mendoza, 165 Wn.2d at 520-21. This rule rests upon principles of due process. State v. McCorkle, 137 Wn.2d 490, 496-97, 973 P.2d 461 (1999) (citing Ford, 137 Wn.2d at 485) ("where the State fails to carry its burden of proof after a specific objection, it would not be provided a further opportunity to do so."). The rule was reaffirmed in Lopez, which stated, "[w]here the defendant raises a specific objection and 'the disputed issues have been fully argued to the sentencing court, we . . . hold the State to the existing record.'" Lopez, 147 Wn.2d at 520 (quoting

Ford, 137 Wn.2d at 485). Lopez emphasized that the State should not be granted a second opportunity to provide evidence it should have submitted in the first instance. Lopez, 147 Wn.2d at 520-21. The rule applies even where the trial court overrules the defense objection in error. Lopez, 147 Wn.2d at 520 n.2.

Here, as stated, at the sentencing hearing, the State offered criminal history summaries listing the alleged prior offense and defense specifically objected. The court overruled the objection and relied upon those documents in finding the State had proved the prior offense. Under the authorities cited above, the State was not entitled to a second opportunity to prove the prior offense or to offer evidence it should have submitted in the first instance.

Former RCW 9.94A.530(2) (2005) requires that, "[w]here the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point." The purpose of the statute is

to prevent ex parte contact with the judge, sua sponte investigation and research of a judge, and sentencing based on speculative facts. Underlying this statutory procedure is the principle of due process. The court should only consider adjudicative evidence that the parties in an adversarial context have "the opportunity to scrutinize, test, contradict, discredit, and correct."

State v. Grayson, 154 Wn.2d 333, 340, 111 P.3d 1183 (2005)
(citing George D. Marlow, From Black Robes to White Lab Coats:
The Ethical Implications of a Judge's Sua Sponte, Ex Parte
Acquisition of Social and Other Scientific Evidence During the
Decision-Making Process, 72 St. John's L.Rev. 291, 319 (1998)
(citing E.I. du Pont de Nemours & Co. v. Collins, 432 U.S. 46, 57,
97 S.Ct. 2229, 53 L.Ed.2d 100 (1977); David Boerner, Sentencing
in Washington, A Legal Analysis of the Sentencing Reform Act of
1981 § 6.25 (1985)).

Here, the State offered the additional materials after the court overruled Adolph's objection and pronounced the sentence, and the court expressly stated it did not rely upon the materials. The additional documents were not presented or considered in an adversarial context where the parties had an opportunity to scrutinize, test, contradict, discredit, and correct them. The State may not rely upon those documents to sustain its burden of proof.

2. THE STATE MAY NOT OFFER ADDITIONAL
EVIDENCE OR RELY UPON THE DISTRICT COURT
DOCKET AND DUI CITATION ON REMAND

Again, in Mendoza, this Court reaffirmed that, "[w]hen a defendant raises a specific objection at sentencing and the State fails to respond with evidence of the defendant's prior convictions,

then the State is held to the record as it existed at the sentencing hearing." Mendoza, 165 Wn.2d at 520-21. The Court was aware of the 2008 amendments to RCW 9.94A.530(2), which now provides, "On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented." RCW 9.94A.530(2).

In Mendoza, the Court acknowledged that "the 2008 versions of RCW 9.94A.500 and RCW 9.94A.530 would apply at resentencing." Mendoza, 165 Wn.2d at 930 n.9. Yet the Court reaffirmed the well established rule that the State should not have a second opportunity to prove a prior offense where the issues have been litigated below. The Court allowed the State to present additional evidence on remand in Mendoza only because "there were no specific objections and the sentencing court never had an opportunity for the State to correct any errors." Id. at 930.

The rule barring the State from presenting additional evidence on remand following a specific objection is constitutionally based and thus cannot be altered by statute. The rule stems from the State's due process burden at sentencing to prove its assertions of criminal history and to ensure the record is sufficient

to support its assertions. Ford, 137 Wn.2d at 480-82, 485. The rule also reflects traditional understandings of fundamental fairness and *autrefois acquit* and is "buttressed by a special interest in finality." Monge v. California, 524 U.S. 721, 737, 118 S.Ct. 2246, 141 L.Ed.2d 615 (1998) (Stevens, J., dissenting). This Court requires a specific objection from the defense in order "to offer the trial court the opportunity to correct the error." Lopez, 147 Wn.2d at 521. Requiring a specific objection also "provides the proper disincentive to criminal defendants who might otherwise purposefully fail to raise potential defects at sentencing in the hopes the appellate court will reverse without providing the State further opportunity to make its case." Ford, 137 Wn.2d at 486. But where the defendant raises a specific objection and the disputed issues have been fully argued to the sentencing court, principles of due process, fundamental fairness, and finality preclude the State from presenting additional evidence. Lopez, 147 Wn.2d at 520-21; Ford, 137 Wn.2d at 485.

In Lopez, at sentencing, the prosecutor asked the court to impose a sentence on the basis of two prior convictions, yet failed to provide evidence of the convictions. Lopez, 147 Wn.2d at 518. Counsel objected, stating, "we need to have the prior offenses . . .

proved by a preponderance of the evidence, which would require two separate judgments and sentences." Id. This Court held counsel's objection was sufficiently specific to notify the sentencing court of its obligation to demand evidence of the prior convictions alleged by the State. Id. at 521. The disputed issues were therefore fully argued to the sentencing court. Id. at 520-21.

Here, as in Lopez, counsel's objection was sufficient to notify the sentencing court of its obligation to demand evidence of the prior conviction alleged by the State. Counsel stated "the record is insufficient" and the criminal history summaries submitted by the State did not "sufficiently set forth that conviction." RP 31-32. Once the objection was made and the trial court given an opportunity to correct the error, the State was limited to the existing record. Mendoza, 165 Wn.2d at 520-21; Lopez, 147 Wn.2d at 520-21; Ford, 137 Wn.2d at 485. The State may not offer additional evidence, or rely upon the evidence it submitted after the court pronounced the sentence, on remand.

3. ADOLPH MAY CHALLENGE THE SENTENCE IN A COLLATERAL ATTACK, BECAUSE IT WAS IMPOSED WITHOUT STATUTORY AUTHORITY

In its response to the PRP, the State argued Adolph could not challenge his sentence in a collateral attack and that he should

have raised the issue in his direct appeal. But it is well settled that a petitioner may challenge in a PRP a sentence that is imposed without statutory authority.

"When nonconstitutional grounds are asserted for relief from personal restraint, the petitioner must establish (1) he or she is being unlawfully restrained, (2) due to a "fundamental defect which inherently results in a complete miscarriage of justice." In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 867, 50 P.3d 618 (2002) (quoting In re Pers. Restraint of Fleming, 129 Wn.2d 529, 532, 919 P.2d 66 (1996) (quoting In re Pers. Restraint of Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990)). "[A] petitioner is unlawfully restrained 'to the extent he [or she] was sentenced on the basis of an incorrect calculation of his [or her] offender score.'" Goodwin, 146 Wn.2d at 867-68 (quoting In re Pers. Restraint of Johnson, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997)). "Moreover, a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice." Goodwin, 146 Wn.2d at 868.

A sentence imposed on the basis of an incorrect offender score is a fundamental defect, because it is imposed without statutory authority. Id.; see RAP 16.4(c)(2) (petitioner is entitled to

relief where sentence "was imposed . . . in violation of the . . . laws of the State of Washington."). This Court has repeatedly reaffirmed that a sentence imposed without statutory authority is subject to challenge in a collateral attack and the defendant is entitled to be resentenced. Goodwin, 146 Wn.2d at 868-69 (and cases cited therein). ""When a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered."" Id. at 869 (quoting In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980) (quoting McNutt v. Delmore, 47 Wn.2d 563, 565, 288 P.2d 848 (1955))).

Although generally a PRP is not a substitute for an appeal, "[c]onfinement beyond that authorized by statute is exactly the kind of fundamental defect which the rule [this Court] announced in Cook, 114 Wn.2d at 812] was aimed at remedying." In re Pers. Restraint of Moore, 116 Wn.2d 30, 33, 803 P.2d 33 (1991).

Here, Adolph's sentence exceeded the court's statutory authority, because it was based on a prior offense that the State either could not or chose not to prove. Ford, 137 Wn.2d at 480. Thus, Adolph may challenge the sentence in this PRP.

4. THE PRP IS TIMELY BECAUSE IT WAS FILED
WITHIN ONE YEAR AFTER THE MANDATE WAS
ISSUED FOLLOWING THE DIRECT APPEAL

In its response to the PRP, the State argued the petition was
untimely pursuant to RCW 10.73.090(1). That statute provides,

No petition or motion for collateral attack on a
judgment and sentence in a criminal case may be
filed more than one year after the judgment becomes
final if the judgment and sentence is valid on its face
and was rendered by a court of competent
jurisdiction.

RCW 10.73.090(1). For purposes of the statute, when a defendant
files a timely direct appeal of a judgment, the judgment "becomes
final" on "[t]he date that an appellate court issues its mandate
disposing" of the appeal. RCW 10.73.090(3)(b).

Here, Adolph filed his PRP within one year after the Court of
Appeals issued its mandate following the direct appeal. The
mandate was issued on June 11, 2008, and the PRP was filed on
July 21, 2008. Appendix C. Therefore, the PRP is timely.

5. ADOLPH MAY CHALLENGE HIS SENTENCE IN
THIS PRP, BECAUSE HE WAS NOT
REPRESENTED BY COUNSEL IN HIS PREVIOUS
PRP

The State also argued the petition was barred by RCW
10.73.140 as a successive collateral attack. That statute provides:

If a person has previously filed a petition for personal
restraint, the court of appeals will not consider the

petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition.

RCW 10.73.140.

Although RCW 10.73.140 divests the Court of Appeals of jurisdiction to decide some collateral attacks, it has no effect on this Court's jurisdiction. "By its specific terms, RCW 10.73.140 relates only to the Court of Appeals and does not apply to the Supreme Court." In re Pers. Restraint of Johnson, 131 Wn.2d 558, 566, 933 P.2d 1019 (1997). Instead, this Court's jurisdiction is determined by RAP 16.4(d), which provides "[n]o more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown." Johnson, 131 Wn.2d at 564, 566 (quoting RAP 16.4(d)).

A second petition seeks "similar relief" under the terms of RAP 16.4(d) if it raises matters that have been "previously heard and determined" on the merits or "if there has been an abuse of the writ or motion remedy." In re Pers. Restraint of Jeffries, 114 Wn.2d 485, 488, 789 P.2d 731 (1990) (citing In re Pers. Restraint of Haverty, 101 Wn.2d 498, 503, 681 P.2d 835 (1984)). Thus, where the petition raises a new issue, the only procedural bar at the Supreme Court level is the abuse of the writ doctrine. In re Pers.

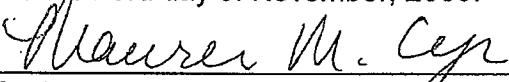
Restraint of Perkins, 143 Wn.2d 261, 266 n.7, 19 P.3d 1027 (2001) (citing In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 352, 5 P.3d 1240 (2000)). A successive petition raising new grounds constitutes an "abuse of the writ" only "if the petitioner was represented by counsel *throughout postconviction proceedings*." Stoudmire, 141 Wn.2d at 352 (quoting Jeffries, 114 Wn.2d at 492) (emphasis in Stoudmire).

Here, although this is Adolph's second PRP, it raises new grounds for relief that were not previously heard or determined. Appendix D. Further, Adolph was not represented by counsel in his previous PRP. Id. Thus, the petition is not an "abuse of the writ" and he may raise this new issue in his successive PRP.

E. CONCLUSION

Because the State did not meet its burden of proving the existence of the Lincoln County conviction, and because there was a specific objection, the petition must be granted and the sentence reversed and remanded for resentencing without the enhancement based on the Lincoln County conviction.

Respectfully submitted this 23rd day of November, 2009.


MAUREEN M. CYR (WSBA 28724)
Washington Appellate Project - 91052
Attorneys for Petitioner

APPENDIX A

D0107I Already on the last page

DN2000SX

08/16/05 13:38:30

DN2001MI Defendant Case History (DCH)

OKANOGAN COUNTY DIST PUB 1 of 1

Case: Csh: Pty: StId: D ADOLPVR433D7 WA

Name: ADOLPH, VINCENT R JR NmCd: IN 382 97536

CONFIDENTIAL--NOT FOR RELEASE

More>

True Name: ADOLPH, VINCENT R JR

IN 382 97536

6 Cases

AKA's:

S	N	Case	LEA	Ty	Crt	Date	Violation	Short	Title	---	Status	---
										DV	Jg	CD W F O
-		7074463	WSP	CT	OKD	12/04/92	DUI			DW	CL	
						12/04/92	DWLS 3RD DEGREE			DW		
-		10094	LSH	CN	LID	12/30/91	LOADED GUN IN MOTOR DRIVEN VE			G	CL	* *
-		10093	LSH	CT	LID	12/30/91	DUI			G	CL	
-		F00078694	SPP	CN	SPM	04/14/91	DISORDERLY CONDUCT			D	CL	* *
						04/14/91	RESISTING ARREST			G		
-		6307	OMP	CT	OKD	11/26/87	DUI			DW	CL	
-		03-1-00415-2	S1	S24		01/26/03	VEHICULAR HOMICIDE			N	G	
						01/26/03	VEHICULAR ASSAULT			N	G	

PF1	PF2	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	PER	CDK	PLS	CDT	BWD	FWD	DOL	COS	CFHS	EXIT
4-0		1 Sess-1		206.194.129.5				FTCP1348		6/75

OKANOGAN COUNTY
JUN 28 2005
PROSECUTOR'S OFFICE

06-27-05 ** ABSTRACT OF COMPLETE DRIVING RECORD
LIC# ADOLP-VR-433D7 SS# 536-62-8781 STATUS: PDL CLEAR
ADOLPH, VINCENT RANDOLPH JR DOB 03-27-1957 CDL CLEAR
181 DUTCH ANDERSON RD SEX M EYES BRN LICENSE ISSUED 04-02-02
OMAK WA 98841 HGT 5'07" WGT 190 LICENSE EXPIRES 03-27-07

**MAIL ADDR ON FILE? N

CDL CLASS: A ENDORSEMENTS: N

NOTE: M 052301 052301 M 062999 062999 M 032698 032698

* 123091 DRIVING UNDER INFLUENCE 031992 D LINCOLN CO 22 000010093
* 120492 DRIVING UNDER INFLUENCE DEF.PRO D OKANOGAN CO.24 007074463
012603 ACCIDENT MOVING 02 VEH
120293 PROB DI DEFERRED PROSECUTION 120298 000000

4-©

1 Sess-1

206.194.129.5

FTCP2459

2/1



I CERTIFY THE ABOVE TO BE
TRUE AND CORRECT.

Renee Townsley
CUSTODIAN OF RECORDS

APPENDIX B

DD/0205X LDH
06/02/2005 12:45 PM

LINCOLN COUNTY DISTRICT COURT
D O C K E T

PAGE 3

DEFENDANT
ADD. PHIL VINCENT R JR
181 DUTCH ANDERSON RD
OMAK WA 99841

CASEL 10093 184
Criminal Traffic
Agency No.

Home Phone: 5098263720
Work Phone: 5096342737

AKA No aliases on file.

OFFICER
87085 LSH REMBACH, KELLY

CHARGES

Violation Date: 12/30/1991
1 45.91.502 DUI

Dv Plea
Guilty

Finding
Guilty

TEXT

5 12/31/1991 Case Filed on 12/31/1991 DJS
03/19/1992 Plea/Response of Guilty Entered on Charge 1
Finding/Judgment of Guilty for Charge 1
Court Imposed Fine on Charge 1: 550.00
with 0.00 Suspended
Court Imposed Jail Time of 1 D on Charge 1
with 0 D Suspended
Driver's License Suspended on Charge 1 for 90 D
07/26/1993 OFF L REMBACH, KELLY Added as Participant
Accounts Receivable Created 396.00
Case Scheduled on Time Pay Agreement 1 for: 471.00
08/03/1993 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS
08/31/1993 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
10/05/1993 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
11/02/1993 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
11/30/1993 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
01/04/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
01/11/1994 94011100067 Time Payment Received 25.00 DJS
02/01/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS
02/08/1994 94039100103 Time Payment Received 100.00 DJS
03/02/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS
04/05/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
04/12/1994 94102100030 Time Payment Received 50.00 DJS
05/03/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS
05/06/1994 94125100044 Time Payment Received 25.00 DJS
05/20/1994 94140100034 Time Payment Received 25.00
05/31/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS
06/06/1994 Time Pay Agreement 1 Rescheduled For: 171.00 DJS
94157100058 Time Payment Received 25.00
07/01/1994 94182100002 Time Payment Received 25.00
08/30/1994 94242100071 Time Payment Received 50.00
11/01/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS
11/15/1994 94319100056 Time Payment Received 25.00 DJS
11/29/1994 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS
01/03/1995 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
01/30/1995 95030100022 Time Payment Received 25.00 DJS

Docket continued on next page

Jun 02 05 01:07p

Lincoln Cl

id C

3481

p.4

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06/02/2005 12:46 PM

LINCOLN COUNTY DISTRICT COURT
D O C K E T

PAGE: 7

CASE: 10088 LSH
Criminal Traffic
Agency No.

DEFENDANT

ADOLPH, VINCENT R JR

(EX) - Continued

S 01/31/1995 DELINQUENT Time Pay Statement Sent for Time Pay Agreement i 'SYS
02/28/1995 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1
03/03/1995 95062100043 Time Payment Received 21.00 DJS
Case Paid in Full and Removed from Time Pay
Charge 1: Def. complied with Jail Sentence
Case Disposition of CL Entered

ACCOUNTING SUMMARY

	Total Due	Paid	Credit	Balance
Timepay: R	396.00	396.00		

ADDITIONAL CASE DATA

Case Disposition
Disposition: Closed Date: 03/03/1995
Licence Surrender Date: 01/01/1900

Personal Description

Sex: M Race: 1 DOB: 03/27/1967
Dr. Lic. No.: ADOLPVR433D7 State: WA Expires: 1994
Employer:
Height: 5 7 Weight: 150 Eyes: BRO Hair: BLK
Identifying Information: TRUE NAME

End of docket report for this case.

This is to certify that the foregoing is a
true copy (photographic) of a record on
file in the District Court of Lincoln
County, WA.

Linda D. Hansen
Clerk, Lincoln County District Court

Jun 07 05 01.00p

Lincoln, C. S. & C. S. C.

Attachment

03-1-00415-2

FILED

03

091-3634
0010093

INFRACCTIONS CRIMINAL **TRAFFIC** **11-27**
11-27

DETAILS OF VIOLATION
CITY OF LINCOLN
DRIVER'S LICENSE

PLAINT VS. NAMED DEFENDANT
GRANOGAN COUNTY
SUPERIOR COURT
CLERK

IN THE DISTRICT **COUNTY** **WASHINGTON**
LINCOLN

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON
DRIVER'S LICENSE **DATE** **EXPIRES** **SUBJECT**
ADAM R. 13307 **11-27** **536-63751**

NAME **LAST** **FIRST** **MIDDLE** **INITIAL**
THOMAS VINCENT RANDOLPH

ADDRESS
RT 2 BOX 5092

CITY **STATE** **ZIP CODE** **EMPLOYER**
OMAK **WA** **98841**

DATE **DATE OF BIRTH** **HEIGHT** **WEIGHT** **EYES** **HAIR** **ALIBERTAL PHONE NO**
11-27 **03-27-67** **503** **150** **BROWN** **BLK**

VIOLATION DATE **MONTH** **DAY** **YEAR** **TIME** **24 HOUR**
12 **30** **11** **2214**

AT-LOCAL PM **CITY/COUNTY OF**
SW 1/4 SECTION 10 T4N R2E **Lincoln**

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND
YEAR **MAKE** **MODEL** **YEAR** **MAKE** **MODEL** **YEAR** **MAKE** **MODEL**
1988 **FORD** **92** **88** **63** **4400** **1988** **FORD** **4400**

OWNER/LESSEE **IF OTHER THAN DRIVER** **ADDRESS** **CITY** **STATE** **ZIP CODE**

ACCIDENT **NO** **YES** **DATE** **TIME** **LOCATION** **CAUSE** **CLIMATE** **DRIVER** **OTHER**

OR THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES/INFRACCTIONS
VIOLATION/STATUTE CODE **DESCRIPTION** **VEHICLE NO** **PLATE** **GRADE** **CLASS**
WA 461502 **DRIVING A MOTOR VEHICLE** **4400** **1988** **1988** **1988**

While under the influence of Intoxication
Licenses

VIOLATION/STATUTE CODE **DESCRIPTION**

91-4343 **PLAINT/VEHICLE**
115 FUNDUS 17307

DATE **TIME** **AT-BOOKING** **DATE** **TIME**
11-27 **17307**

WIT-OLD ADULT AND TRAVELING COMMITTED EACH OF THE ABOVE INFRACCTIONS/VIOLATIONS. I PROVIDE TO THE JUDGE AS REQUESTED ON THIS NOTICE

OFFICER **DATE** **PLAINT/VEHICLE** **WA**
K.T. Henderson **11-27** **115 FUNDUS 17307**

Signature **DATE** **PLAINT/VEHICLE** **WA**
Booke **11-27** **115 FUNDUS 17307**

INFRACTION	COMPLAINT/CITATION	PENALTY
1. L.V. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
2. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
3. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
4. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
5. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
6. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
7. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
8. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
9. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
10. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
11. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
12. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
13. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
14. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
15. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
16. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
17. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
18. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
19. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
20. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
21. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
22. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
23. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
24. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
25. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
26. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
27. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
28. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
29. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
30. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
31. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
32. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
33. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
34. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
35. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
36. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
37. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
38. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
39. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
40. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
41. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
42. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
43. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
44. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
45. C.N. 461502	PLAINT/VEHICLE	SUSPENDED \$50.00
46. C.N. 461502		

This is to certify that the foregoing is a true copy (photograph) of a record on file in the District Court of Lincoln County, WA.

[Signature]
Clerk, Lincoln County District Court

WASHINGTON UNIFORM COURT DOCKET-COURT COPY

671

APPENDIX C

CASE EVENTS # 245977

Date	Item	Action	Participant
06/25/2009	Archive Stored Cases <i>Comment: sent to SC</i>	Sent by Court	
06/24/2009	Archive Stored Cases <i>Comment: Give to Barb when in</i>	Received by Court	
03/20/2009	Court of Appeals case file (pouch) <i>Comment: File ret'd from CJD</i>	Received by Court	
11/07/2008	Court of Appeals case file (pouch) <i>Comment: To CJD</i>	Sent by Court	
10/20/2008	Stored <i>Comment: BOX 3438 Records Center</i>	Status Changed	
09/05/2008	Court of Appeals case file (pouch) <i>Comment: File ret'd from CJD</i>	Received by Court	
08/06/2008	Court of Appeals case file (pouch) <i>Comment: To CJD</i>	Sent by Court	
06/11/2008	Disposed	Status Changed	
06/11/2008	Mandate	Filed	
05/02/2008	Court of Appeals case file (pouch) <i>Comment: pouch returned from Supreme Court</i>	Received by Court	
05/01/2008	Prv denied <i>Comment: #80431-1, Order denying review filed at SC on 4/30/08 additional copy received 5/5</i>	Received by Court	SUPREME COURT
10/16/2007	Other filing <i>Comment: Vincent Adolph's response to State of Washington's Response #80431-1</i>	Received by Court	Adolph, Vincent R Jr.
10/08/2007	Other filing Service Date: 2007-10-04 <i>Comment: copy of Respondent's Answer to Petition for Review</i>	Received by Court	SLOAN, KARL F
09/19/2007	Letter <i>Comment: 80431-1</i>	Received by Court	SUPREME COURT
09/10/2007	Other filing	Received by Court	SLOAN, KARL F

	Service Date: 2007-09-05 <i>Comment: #80431-1, motion for extension to file answer to Motion for Discretionary Review.</i>		
08/06/2007	Letter <i>Comment: #80431-1</i>	Received by Court	SUPREME COURT
07/20/2007	Court of Appeals case file (pouch) <i>Comment: One pouch, Petition for Discretionary Review, Briefs, CP, VRP sent.</i>	Sent by Court	
07/16/2007	Notice of Discret Review to Supreme Crt Service Date: 2007-07-12	Received by Court	Adolph, Vincent R Jr.
06/20/2007	Order on Motions <i>Comment: Order Denying Motion to Modify Commissioner's Ruling of 3/16/07</i>	Filed	SCHULTHEIS, JOHN A.
06/20/2007	Letter	Sent by Court	
05/25/2007	Answer to motion <i>Comment: In response to motion to modify commissioner's ruling. No response as of 6/1/07. Circulated to Panel 6 on 6/1/07.</i>	Not filed	SLOAN, KARL F
05/15/2007	Letter	Sent by Court	
05/15/2007	Letter	Sent by Court	
05/14/2007	Ruling on Motions <i>Comment: Notation ruling: "Motion granted to date of receipt."</i>	Filed	MCCOWN, JOYCE J.
05/10/2007	Motion to Extend Time to File Motion Status: Decision filed <i>Comment: Rec'd 05/10/07</i>	Filed	CANZATER, TANESHA LA TRELLE
04/23/2007	Monetary Amount, not filing fee <i>Comment: Inv. 6654 for \$20 for telephone conference (date of conf 2/13/07); over due sent 4/16/07 now due 5/2/07</i>	Received by Court	SLOAN, KARL F
04/18/2007	Motion to Modify motion on the Merits Service Date: 2007-04-16 Hearing Location: None Motion Status: Decision filed <i>Comment: Rec'd 4/18, was due 4/16/07. Called for motion for ext of time to date of receipt. Per not ruling of 5/14, now due 5/18/07 (date of receipt). Called for answer 5/15/07</i>	Filed	CANZATER, TANESHA LA TRELLE
04/16/2007	Notice of Change of Address <i>Comment: change of address for Mr. Adolph</i>	Filed	Adolph, Vincent R Jr.

03/16/2007	Decision Filed	Status Changed	
03/16/2007	Ruling terminating Review <i>Comment: The State's motion on the merits is granted and the decision of the trial court affirmed.</i>	Filed	MCCOWN, JOYCE J.
03/16/2007	Trial Court Action <i>Comment: The State's motion on the merits is granted and the decision of the trial court affirmed.</i>	Not Required	MCCOWN, JOYCE J.
03/12/2007	Letter <i>Comment: Letter to Mr. Adolph's wife returning \$12 money order. Total costs of CD duplication is \$11.80; cannot process refund for overpayment.</i>	Sent by Court	
03/08/2007	Other <i>Comment: Money order for copy of CD - 2/13/07 hearing (\$12.00)</i>	Received by Court	Adolph, Vincent R Jr.
03/02/2007	Other <i>Comment: Money order for \$10.00 for tape of 2/13/06 hearing before commissioner</i>	Received by Court	Adolph, Vincent R Jr.
03/02/2007	Letter <i>Comment: Letter to Mr. Adolph's wife returning \$10 money order. Total costs of CD duplication is \$11.80; cannot produce tape only CD.</i>	Sent by Court	
02/13/2007	Telephone Call <i>Comment: from Kate Sanchez (sister of V. Adolph) going to be sending in check for \$11.80 for a copy of the hearing tape - Sam advised - she will provide an address to where it needs to be forwarded to - bal</i>	Received by Court	
12/07/2006	Motion on the Merits Calendar Type: Commissioner's Oral Argument Motion Calendar Hearing Official: McCown, Joyce J. Hearing Date: 02/13/2006 Hearing Time: 2:30 PM Hearing Location: Teleconference Motion Status: Decision filed <i>Comment: "Motion to File Respondent's Corrected Motion on the Merits" and "States Corrected Motion on the Merits" Motion to file corrected MMT granted. This corrects original MMT filed 9/5/06.</i>	Filed	SLOAN, KARL F
12/07/2006	Motion - Other	Filed	SLOAN, KARL F

	Hearing Location: None Motion Status: Decision filed <i>Comment: Motion to file respondent's corrected motion on the merits</i>		
12/07/2006	Ruling on Motions <i>Comment: "Motion granted."</i>	Filed	MCCOWN, JOYCE J.
12/07/2006	Letter	Sent by Court	
12/05/2006	Letter <i>Comment: telling appellant that he can only file a SAG, which he did, but only his atty can file an MMT to Reverse and Mot for Release - sending those docs back to him (cc to counsel) - bal</i>	Sent by Court	
12/04/2006	Motion - Other Hearing Location: None Motion Status: No Action Necessary <i>Comment: "Motion to Reverse"</i>	Filed	Adolph, Vincent R Jr.
12/04/2006	Motion for Release Pending Appeal Hearing Location: None Motion Status: No Action Necessary <i>Comment: "Motion for Release due to the Almost Certain Probability that Mr. Adolph will Prevail on Appeal."</i>	Filed	Adolph, Vincent R Jr.
11/16/2006	Letter <i>Comment: Letter requesting to be present via telephone for the merits hearing.</i>	Received by Court	Adolph, Vincent R Jr.
11/14/2006	Letter	Sent by Court	
11/13/2006	Motion to Continue Service Date: 2006-11-06 Hearing Location: None Motion Status: Decision filed	Filed	SLOAN, KARL F
11/13/2006	Ruling on Motions <i>Comment: "Motion granted. The hearing is now scheduled for February 13, 2007."</i>	Filed	MCCOWN, JOYCE J.
10/09/2006	Response to motion <i>Comment: "Response to State's Motion on the Merits"</i>	Received by Court	Adolph, Vincent R Jr.
09/19/2006	Letter	Sent by Court	
09/18/2006	Motion to Continue Service Date: 2006-09-15 Hearing Location: None	Filed	

	Motion Status: Decision filed		
09/18/2006	Ruling on Motions <i>Comment: Motion granted. The hearing is now scheduled for November 7, 2006 at 3:30 p.m.</i>	Filed	MCCOWN, JOYCE J.
09/05/2006	Set for Motion Calendar	Status Changed	
09/05/2006	Motion on the Merits Calendar Type: Commissioner's Oral Argument Motion Calendar Hearing Official: McCown, Joyce J. Service Date: 2006-09-01 Hearing Date: 02/13/2007 Hearing Time: 2:30 PM Hearing Location: Teleconference Motion Status: Decision filed <i>Comment: per JJM moved to an earlier setting as it became available - parties agreed to moving up 1 hr.</i>	Filed	SLOAN, KARL F
09/05/2006	Oral Argument Setting Letter <i>Comment: setting mmt hearing and response date if any</i>	Sent by Court	
09/05/2006	Response to motion <i>Comment: if any to the mmt</i>	Not filed	CANZATER, TANESHA LA TRELLE
09/05/2006	Respondents brief <i>Comment: Was due 8/18/06, 10-day now due 9/1/06 or \$100 terms*Ext now due 9/5/06.</i>	Not filed	SLOAN, KARL F
09/01/2006	Ruling on Motions <i>Comment: "Res brief is now due 9/5/06." \$100 if untimely</i>	Filed	CRANDALL, PATRICIA
09/01/2006	Letter	Sent by Court	
08/25/2006	Affidavit of Service <i>Comment: amended to correct address</i>	Filed	SLOAN, KARL F
08/23/2006	Motion to Extend Time to File Service Date: 2006-08-23 Hearing Location: None Motion Status: Decision filed	Filed	SLOAN, KARL F
08/22/2006	Letter of Sanctions <i>Comment: 10-day</i>	Sent by Court	
06/23/2006	Letter <i>Comment: sent copy of statement to both counsel</i>	Sent by Court	
06/19/2006	Statement of Additional Grounds for	Filed	Adolph, Vincent R

	Review Service Date: 2006-06-23 Pages: 26 <i>Comment: rec'd letter 6/6/06 stating he did not get the vrp's until 5/24/06 & will file grounds by 6/23/06. *per our letter 6/7/06, we ret'd the app's brief for corrections, this is not due until 30 days from our letter sent w/Statement form after corrected app brief filed. *Served vrp 5/15/06. *Did not send notice as statement rec'd 6/19/06.</i>		Jr.
06/19/2006	Affidavit of Service <i>Comment: served vrp on 5/15/06.</i>	Filed	CANZATER, TANESHA LA TRELLE
06/19/2006	Appellants brief Service Date: 2006-06-16 Pages: 14 <i>Comment: Was due 4/24/06, ext now due 5/16/06. *Rec'd 5/15/06, ret'd 6/7/06 for corrections, now due 6/19/06.</i>	Filed	CANZATER, TANESHA LA TRELLE
06/07/2006	Letter <i>Comment: ret'd brief for correction to sub numbers, now due 6/19/06 & advised Adolph his statement is not due until 30-days from our letter that we will send after the corrected appellant's brief is filed.</i>	Sent by Court	
06/06/2006	Letter <i>Comment: Advising SAG will be submitted by June 23, 2006.</i>	Received by Court	Adolph, Vincent R Jr.
06/06/2006	Record Ready	Status Changed	
06/06/2006	Ruling on Motions <i>Comment: Mr. Adolph's motion is denied (review of denial of appeal bond)</i>	Filed	MCCOWN, JOYCE J.
06/06/2006	Letter	Sent by Court	
05/23/2006	Motion Heard	Status Changed	MCCOWN, JOYCE J.
05/22/2006	Other <i>Comment: Notice to the Court</i>	Filed	CANZATER, TANESHA LA TRELLE
05/17/2006	Response to motion	Filed	SLOAN, KARL F
05/08/2006	Other filing <i>Comment: Opening Brief on Trial Courts Denial to Grant Mr. Adolph an Appeal Bond. To Comm</i>	Filed	Adolph, Vincent R Jr.
05/08/2006	Other filing	Filed	

	<i>Comment: Several declarations of various people in support of brief of Mr. Adolph for appeal bond</i>		
05/08/2006	Letter <i>Comment: Requesting to be present at the tel. hearing.....</i>	Received by Court	Adolph, Vincent R Jr.
04/27/2006	Ruling on Motions <i>Comment: "App's brief is now due 5/16/06." \$100 if untimely</i>	Filed	CRANDALL, PATRICIA
04/27/2006	Letter	Sent by Court	
04/24/2006	Motion to Extend Time to File Service Date: 2006-04-22 Hearing Location: None Motion Status: Decision filed	Filed	CANZATER, TANESHA LA TRELLE
03/27/2006	Letter <i>Comment: w/brief due date</i>	Sent by Court	
03/27/2006	Report of Proceedings Pages: 947 Volumes: 5 <i>Comment: 5/31/05, 6/1-3/05</i>	Received by Court	OKANOGAN COUNTY SUPERIOR COURT
03/27/2006	ASCII Disk	Received by Court	OKANOGAN COUNTY SUPERIOR COURT
03/27/2006	Report of Proceedings Pages: 91 Volumes: 1 <i>Comment: 3/11/04, 1/20/05, 4/28/05, 5/5/05, 9/19/05</i>	Received by Court	OKANOGAN COUNTY SUPERIOR COURT
03/27/2006	ASCII Disk	Received by Court	OKANOGAN COUNTY SUPERIOR COURT
03/20/2006	Oral Argument Setting Letter	Sent by Court	
03/20/2006	Set for Motion Calendar	Status Changed	
03/13/2006	Motion - Other Calendar Type: Commissioner's Oral Argument Motion Calendar Hearing Official: McCown, Joyce J. Hearing Date: 05/23/2006 Hearing Time: 9:30 AM Hearing Location: Teleconference Motion Status: Decision filed <i>Comment: Motion for review of order denying bond, To Comm</i>	Filed	

03/09/2006	Supplemental Report of Proceedings <i>Comment: 5/31, 6/1-3/05 was due 2/2/06, 10 day sent, now due 2/21/06 or \$100, was due 2/21/06, ext granted, now due 3/23/06, \$100 if untimely</i>	Filed	Batson, Dori
03/09/2006	Filing of VRP by Crt Reporter Service Date: 2006-03-08 <i>Comment: was due 2/2/06, 10 day sent, now due 2/21/06 or \$100, was due 2/21/06, ext granted, now due 3/23/06, \$100 if untimely</i>	Filed	Batson, Dori
03/09/2006	Record Ready	Status Changed	
03/09/2006	Report of Proceedings <i>Comment: 3/4/04, 3/11/04, 1/20/05, 4/28/05, 5/5/05, 5/31/05, 9/19/05, unlike soa was due 1/19/06, 10 day sent, now due 2/21/06 or \$100, Was due 2/21/06, ext granted, now due 3/23/06, \$100 if untimely</i>	Filed	Batson, Dori
03/09/2006	Filing of VRP by Crt Reporter Service Date: 2006-03-08 <i>Comment: was due 1/19/06, 10 day sent, now due 2/21/06 or \$100, was due 2/21/06, ext granted, now due 3/23/06, \$100 if untimely</i>	Filed	Batson, Dori
03/01/2006	Letter <i>Comment: seeking review of order denying bond, To Comm</i>	Received by Court	Adolph, Vincent R Jr.
02/21/2006	Letter	Sent by Court	
02/21/2006	Letter	Sent by Court	
02/21/2006	Telephone Call <i>Comment: All CDs sent to Ms. Batson for transcription</i>	Sent by Court	OKANOGAN COUNTY SUPERIOR COURT
02/17/2006	Ruling on Motions <i>Comment: "The report of proceedings is now due March 23, 2006."</i>	Filed	CRANDALL, PATRICIA
02/17/2006	Ruling on Motions <i>Comment: "The report of proceedings is now due March 23, 2006."</i>	Filed	CRANDALL, PATRICIA
02/15/2006	Motion to Extend Time to File Service Date: 2006-02-14 Hearing Location: None Motion Status: Decision filed	Filed	Batson, Dori
02/15/2006	Motion to Extend Time to File Service Date: 2006-02-14 Hearing Location: None Motion Status: Decision filed	Filed	Batson, Dori

02/15/2006	Clerk's Papers Pages: 196 Volumes: 1	Received by Court	OKANOGAN COUNTY SUPERIOR COURT
02/08/2006	Letter of Sanctions <i>Comment: 10 day</i>	Sent by Court	
02/08/2006	Letter of Sanctions <i>Comment: 10 day</i>	Sent by Court	
01/18/2006	Notice of Appearance <i>Comment: copy of notice to trial ct</i>	Received by Court	CANZATER, TANESHA LA TRELLE
01/18/2006	Amended DES Service Date: 2006-01-12	Received by Court	CANZATER, TANESHA LA TRELLE
01/11/2006	Letter	Sent by Court	
01/11/2006	Letter	Sent by Court	
01/10/2006	Ruling on Motions <i>Comment: "Extension granted to date of receipt."</i>	Filed	CRANDALL, PATRICIA
01/10/2006	Ruling on Motions <i>Comment: "Extension granted to date of receipt."</i>	Filed	CRANDALL, PATRICIA
01/05/2006	Affidavit of Service	Filed	CANZATER, TANESHA LA TRELLE
01/05/2006	Affidavit of Service	Filed	CANZATER, TANESHA LA TRELLE
01/03/2006	Supplemental Statement of Arrangements Service Date: 2005-12-30	Filed	CANZATER, TANESHA LA TRELLE
12/16/2005	Motion to Extend Time to File Service Date: 2006-01-03 Hearing Location: None Motion Status: Decision filed <i>Comment: called for 11/29/05, will send 12/12 per phone call</i>	Filed	CANZATER, TANESHA LA TRELLE
12/06/2005	Motion to Extend Time to File Service Date: 2006-01-03 Hearing Location: None Motion Status: Decision filed <i>Comment: will send 12/12 per phone call</i>	Filed	CANZATER, TANESHA LA TRELLE
11/18/2005	Statement of Arrangements	Filed	CANZATER,

	Service Date: 2005-11-16 <i>Comment: was due 11/16/05, ext granted to date of receipt</i>		TANESHA LA TRELLE
11/18/2005	Designation of Clerks Papers Service Date: 2005-11-16 <i>Comment: was due 11/16/05, ext granted to date of receipt</i>	Received by Court	CANZATER, TANESHA LA TRELLE
10/28/2005	Affidavit of Service	Filed	
10/24/2005	Perfection Letter	Sent by Court	CRANDALL, PATRICIA
10/24/2005	Indigent Defense Counsel Assigned <i>Comment: appoints Tanesha La Trelle Canzater</i>	Filed	
10/19/2005	Case Received and Pending	Status Changed	
10/19/2005	Judgment & Sentence <i>Comment: 2 counts Vehicular Homicide under the influence.</i>	Received by Court	
10/19/2005	Order of Indigency in Superior Court	Received by Court	
10/18/2005	Notice of Appeal Service Date: 2005-10-24	Filed	

APPENDIX D

CASE EVENTS # 263673

Date	Item	Action	Participant
08/03/2009	Stored <i>Comment: BOX 3592 AT COA</i>	Status Changed	
03/20/2009	Court of Appeals case file (pouch) <i>Comment: File ret'd from CJD</i>	Received by Court	
11/07/2008	Court of Appeals case file (pouch) <i>Comment: To CJD</i>	Sent by Court	
09/22/2008	Disposed	Status Changed	
09/22/2008	Certificate of Finality	Filed	
09/05/2008	Court of Appeals case file (pouch) <i>Comment: File ret'd from CJD</i>	Received by Court	
08/06/2008	Court of Appeals case file (pouch) <i>Comment: To CJD</i>	Sent by Court	
08/05/2008	Court of Appeals case file (pouch) <i>Comment: pouch returned from Supreme Court</i>	Received by Court	
01/07/2008	Discret Review to SC Denied <i>Comment: #80758-2, ruling denying review filed at SC on 1/4/08</i>	Received by Court	SUPREME COURT
10/29/2007	Letter <i>Comment: #80758-2</i>	Received by Court	SUPREME COURT
10/12/2007	Court of Appeals case file (pouch) <i>Comment: One file, Motion for Discretionary Review sent.</i>	Sent by Court	
10/10/2007	Notice of Discret Review to Supreme Crt Service Date: 2007-10-08	Received by Court	Adolph, Vincent R.
10/05/2007	Letter <i>Comment: another copy of the Order Dismissing PRP sent to Mr. Adolph (DOC # was wrong on previous letter and is now corrected)</i>	Sent by Court	Adolph, Vincent R.
10/01/2007	Letter <i>Comment: Letter from the Law Offices of Cynthia Jordan requesting copy of order</i>	Received by Court	
10/01/2007	Letter	Received by Court	Adolph, Vincent R.

	<i>Comment: Letter requesting copy of order.</i>		
09/10/2007	Other Ruling <i>Comment: Filing fee waived.</i>	Filed	MCCOWN, JOYCE J.
09/10/2007	Filing fee	Waived	MCCOWN, JOYCE J.
09/10/2007	Decision Filed	Status Changed	
09/10/2007	Order terminating Review <i>Comment: Order Dismissing Personal Restraint Petition</i>	Filed	SWEENEY, DENNIS J.
09/10/2007	Trial Court Action <i>Comment: Order Dismissing Personal Restraint Petition</i>	Not Required	SWEENEY, DENNIS J.
09/10/2007	Letter	Sent by Court	
08/21/2007	Notice of Change of Address <i>Comment: new address for Mr. Adolph</i>	Filed	Adolph, Vincent R.
08/21/2007	Statement of Finances	Filed	Adolph, Vincent R.
08/20/2007	Case Received and Pending <i>Comment: (originally rec'd at COA 8/9/07 by mistake, returned to county for processing; rec'd certified copies 8/20/07)</i>	Status Changed	
08/20/2007	Other filing <i>Comment: Order Transferring CRR 7.8 Motion To Court of Appeals for Consideration as Personal Restraint Petition (originally rec'd at COA 8/9/07 by mistake, returned to county for processing; rec'd certified copies 8/20/07)</i>	Filed	
08/20/2007	Judgment & Sentence <i>Comment: J & S as an attachment to Motion to Docket and Motion to Modify and Correct Judgment and Sentence (Ct 1 and II - Vehicular Homicide - under Influence) (originally rec'd at COA 8/9/07 by mistake, returned to county for processing; rec'd certified copies 8/20/07)</i>	Filed	
08/15/2007	Letter	Sent by Court	
08/15/2007	Letter <i>Comment: returning all pleadings rec'd at COA on 8/9/07; was sent pre maturely to COA; they will send certified copies</i>	Sent by Court	OKANOGAN COUNTY SUPERIOR COURT

08/03/2007	Personal Restraint Petition	Filed	Adolph, Vincent R
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STATE OF WASHINGTON

09 NOV 23 PM 3:56

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BY RONALD R. CARPENTER

CLERK

IN RE THE PERSONAL RESTRAINT PETITION OF)

VINCENT ADOLPH,)

Petitioner.)

NO. 82868-7


DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 23RD DAY OF NOVEMBER, 2009, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KARL SLOAN, DPA	(X)	U.S. MAIL
OKANOGAN COUNTY PROSECUTOR'S OFFICE	()	HAND DELIVERY
PO BOX 1130	()	
OKANOGAN, WA 98840-1130		

[X] VINCENT ADOLPH	(X)	U.S. MAIL
997962	()	HAND DELIVERY
AIRWAY HEIGHTS CORRECTIONS CENTER	()	
PO BOX 1899		
AIRWAY HEIGHTS, WA 99001-1899		

SIGNED IN SEATTLE, WASHINGTON THIS 23RD DAY OF NOVEMBER, 2009.

X 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
☎(206) 587-2711